

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Advanced Methods to Target and Eliminate	)	CG Docket No. 17-59
Unlawful Robocalls	)	
	)	
<b>To: The Commission</b>	)	
	)	

**REPLY COMMENTS OF THE  
ALARM INDUSTRY COMMUNICATIONS COMMITTEE**

The Alarm Industry Communications Committee (“AICC”), on behalf of its members,<sup>1</sup> hereby files reply comments on the Commission’s Second Further Notice of Proposed Rulemaking, seeking comment on ways to address unwanted calls to reassigned numbers through the implementation of a reassigned numbers database.<sup>2</sup> While AICC supports the Commission’s efforts to reduce or eliminate unlawful robocalls, the Commission should tailor its efforts to ensure they do not prevent businesses, such as alarm companies, from contacting their customers or subject businesses to tremendous liability. In particular, AICC is concerned that the Commission's proposed re-assigned number database could be very expensive and effectively not available to small companies, including the majority of alarm companies.

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<sup>1</sup> The Monitoring Association (TMA) (formerly known as Central Station Alarm Association), Electronic Security Association (ESA), Security Industry Association (SIA), the National Public Safety Telecommunications Council, Ackerman Security, ADS, ADT, AES- IntelliNet, AFA Protective Systems, Alarm.com, Alarm Detection Systems, ASG Security, Axis Communications, Bay Alarm, Bosch Security Systems, COPS Monitoring, CRN Wireless, LLC, DGA Security, Digital Monitoring Products, Digital Security Control, FM Approvals, Honeywell Security, Inovonics, Interlogix, Intertek Testing, iPDatatel, Napco Security, NetOne, Inc., Nortek, Protection One, Rapid Response Monitoring, Security Central NC, Select Security/Security Partners, Stanley Security, Supreme Security Systems, Inc., Telular Corp., Tyco Integrated Security, Tyco Security Products, Underwriters Laboratories, Universal Atlantic Systems, Vector Security, Inc., Vivint, and Wayne Alarm.

<sup>2</sup> *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Further Notice of Proposed Rulemaking, CG Docket No. 17-59; FCC 18-31, released March 23, 2018.

## **I. Introduction**

AICC member companies protect over 30 million residential, business and sensitive facilities and their occupants from fire, burglaries, sabotage and other emergencies and, consequently, are an integral part of the public safety network. Modern security systems monitor a number of critical functions for customers and send alarm notifications to the monitoring station. These notifications include system alarm triggers, such as a breach of a door or window sensor, notification that a motion detector or glass break has been triggered, or that a smoke or carbon monoxide sensor has been triggered. When a monitoring company receives notification of a smoke or fire alarm, emergency personnel are dispatched immediately and the monitoring station attempts to contact the customer. In order to prevent dispatching police to a "false alarm," alarm monitoring stations will try to confirm the existence of a true emergency before dispatching emergency personnel.

Besides these emergency communications, alarm companies also place automated calls that are closely related to the purchased alarm service, and are the type of communications customers expect to receive by providing their cell phone number to an alarm company. Non-emergency automated calls may be placed to contact that customer about their account and alarm system status and to verify installation/maintenance appointments. Other important notifications that can best be quickly distributed to alarm subscribers by placing a call and/or text message include: the need for an equipment upgrade; an equipment recall; alerts regarding a system security risk (e.g., the need for a software upgrade to the customer's DVR or other equipment that has been identified as being a breach threat); alerts of suspicious activity in a particular market (e.g., someone is knocking on doors soliciting customers pretending they are from the

alarm company); or proactive security alerts (e.g., in an area that has been subject to recent home invasions).

As it considers issues related to the TCPA, AICC emphasizes to the Commission that the purpose of the TCPA is to balance “[i]ndividuals’ privacy rights, public safety interests, and commercial freedoms of speech and trade . . . in a way that protects the privacy of individuals and permits legitimate telemarketing practices.”<sup>3</sup> Any steps take to address the robocalling issue must be taken with this principle in mind.

## **II. The Commission Should Wait Until It Implements the ACA Decision**

As a threshold matter, AICC agrees with those commenters that argue that the database question is premature and should not be decided until the Commission implements the D.C. Circuit Court’s decision in *ACA Int’l v. FCC*.<sup>4</sup> In particular, AICC believes that the Commission’s ultimate rulings on the definition of “called party” and the revocation of prior consent could affect the implementation of a reassigned number database.

The D.C. Circuit Court struck down the whole of the Commission’s 2015 approach to the reassigned number issue because it recognized the incompatible result: without the one-call only safe harbor, the Commission’s interpretation of “called party” would make a caller “strictly liable for all calls made to the reassigned number, even if she has no knowledge of the reassignment” – a result the Commission expressly declined to require in the same 2015 Order.<sup>5</sup> As AICC argued in the Commission’s proceeding on this matter, defining “called party” as the

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<sup>3</sup> P.L. 102-243, §2(9).

<sup>4</sup> See, e.g., Comments of INCOMPAS, CG Docket No. 17-59, filed June 7, 2018; Comments of CTIA, CG Docket No. 17-59, filed June 7, 2018 at 9.

<sup>5</sup> *ACA Int’l v. FCC*, 885 F.3d at 706 (DC Cir. 2018).

“intended recipient” best comports with the Commission’s determination that a caller may reasonably rely on the prior consent of the party that provided the telephone number to contact.”<sup>6</sup>

The ability to rely on the prior consent of the party intended to be called could affect the implementation of a reassigned number database, as entities using autodialers would be in a better position to address the situation themselves. As the U.S. Chamber Institute for Legal Reform asserts, “the complications, burdens, and imposition of costs on all consumer facing businesses could be alleviated through consumer empowerment—namely the individual answering a phone call could alert the caller that the number no longer belongs to the company’s consumer.”<sup>7</sup>

The D.C. Circuit upheld the FCC’s ruling that a called party can revoke consent “at any time and through any reasonable means that clearly expresses a desire not to receive further messages.” The Commission recently sought comment on “what opt-out methods would be sufficiently clearly defined and easy to use such that ‘any effort to sidestep the available methods in favor of idiosyncratic or imaginative revocation requests might well be seen as unreasonable.’”<sup>8</sup> This decision may have bearing on how a reassigned number database should be implemented, and should accordingly be taken into account.

### **III. Access to the Database Must Be Affordable**

AICC’s primary concern with the implementation of any database for reassigned numbers is the ability of small companies to be able to afford access. If the cost of using the database is too expensive, small companies could be precluded from using it and getting any safe

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<sup>6</sup> Reply Comments of AICC, CG Docket No. 18-152, 02-278, filed June 28, 2018 *citing* Comments of ADT, CG Docket No. 18-152, 02-278, filed June 13, 2018 at p 19.

<sup>7</sup> Comments of the U.S. Chamber Institute for Legal Reform, CG Docket No. 17-59, filed June 7, 2018, at 3.

<sup>8</sup> *Consumer and Governmental Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit’s ACA International Decision*, Public Notice, DA 18-493, CG Docket No. 18-152, 02-278, released May 14, 2018.

harbor protection the Commission may adopt -- which could mean they would be precluded from contacting their customers efficiently, while larger companies would be able to absorb the cost of the database and further add to their competitive advantage over smaller companies.

Although the record indicates that creating and maintaining a reassigned numbers database would be expensive,<sup>9</sup> there is no information on what the cost would actually be. INCOMPAS, for example, argues only that “[r]egardless of which mechanism the Commission may prefer for reassigned number data administration, requiring service providers to report into a database will translate into significant engineering and operational costs as these companies develop and maintain compliance systems.”<sup>10</sup> If the cost to set up and maintain the database is high, then it is likely that the cost to access the database will also be high. Indeed, several commenters, including INCOMPAS, propose that service providers be compensated for reporting information to the database.<sup>11</sup>

If small companies are not able to afford access to the database, then they may not be able to afford to use it and, in turn, may be precluded from getting any safe harbor protection the Commission may adopt. They will still face class action trolls, and they will not be able to use lawful autodialed calls to efficiently contact their customers, thus harming the “commercial freedoms of speech and trade” that Congress sought to protect in enacting the TCPA.<sup>12</sup> In addition, cost will not impact larger companies as much as small companies and they will be able to access database, obtain safe harbor and, therefore, continue to make calls to efficiently contact customers, to the detriment of the ability of small companies to compete.

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<sup>9</sup> *See, e.g.*, Comments of INCOMPAS at 2.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> P.L. 102-243, §2(9).

AICC believes ACA International's assertion that "[t]he success of any reassigned number database hinges on the safe harbor that the FCC associates with use of it..."<sup>13</sup> is likely true. And, even if use of the database is technically voluntary, AICC also shares ACA International's concern that "... a de facto standard for being required to check [the database] could be created through judicial decisions..."<sup>14</sup> Accordingly, if the Commission does implement a reassigned numbers database, it must also ensure that the database is equally accessible by all entities before its implementation.

#### **IV. Conclusion**

Based on the forgoing, AICC urges the Commission to interpret the term "called party" to mean the party intended to be called. Such an interpretation would greatly reduce, if not eliminate entirely, the need for a reassigned number database. To the extent that the Commission does implement a database, the Commission must also make sure that it is fairly accessible to all stakeholders.

Respectfully submitted,

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<sup>13</sup> Comments of ACA International, CG Docket No. 17-59, filed June 5, 2018, at 5.

<sup>14</sup> *Id.*